RECENT CASES.

ADVERSE POSSESSION — WHAT CONSTITUTES — EXCLUSIVE POSSESSION. — The defendant had cultivated as his own, for over twenty years, a strip of land belonging to the plaintiff, beneath the plaintiff's eaves. The plaintiff sued the defendant for building a walk on this strip. *Held*, that the defendant has acquired the fee in the strip by adverse possession, subject to an easement in the plaintiff to let his eaves hang over it. *Rooney* v. *Petry*, 17 Ont. Wk. Rep. 83.

To gain title by adverse possession the adverse possessor must have exclusive possession: he must be in and the true owner must be out. *Bellis* v. *Bellis*, 122 Mass. 414. If the true owner is making such use of his land as at least to reserve in himself an easement over it, and that use is, as here, the one which a true owner would naturally make of that land, it seems strange to say that another can, during all that period of use, be in exclusive possession. To build a shed with overhanging eaves has been regarded as such a taking of the land underneath the eaves as will found a claim by prior possession to that land against one who later put it under cultivation. *Thacker* v. *Guardenier*, 7 Met. (Mass.) 484. In Wisconsin it has been squarely decided that overhanging eaves give the owner such possession of the land beneath them as to prevent exclusive possession in another. *Lins* v. *Seefeld*, 126 Wis. 610. *Contra*, *Randall* v. *Sanderson*, 111 Mass. 114. The Wisconsin view seems the fairer and more logical one.

ADVERSE POSSESSION — WHAT CONSTITUTES — WHETHER CONSCIOUS HOSTILITY IS ESSENTIAL. — The plaintiff claimed and occupied land for the statutory period up to what he believed to be the line mentioned in his deed. By mistake his claim went beyond the true line. *Held*, that since the plaintiff had no intention of claiming land which did not belong to him, he acquired no title by adverse possession. *Clinchfield Coal Co.* v. *Viers*, 68 S. E. 976 (Va.).

In general the statutes of limitations merely bar the owner's remedy and are silent as to the nature of the holding which suffices to accomplish it. From the analogy to disseisin, however, the courts early established the rule that the stranger's possession must be under claim of title. But neither this analogy nor the words of the statute justify the further requirement that such claim must be consciously hostile to the true owner. It is settled that when the defendant's claim to the entire tract which he has occupied rests upon adverse possession, conscious hostility is not necessary. *Sumner* v. *Stevens*, 6 Met. (Mass.) 337; *Nowlin* v. *Reynolds*, 25 Gratt. (Va.) 137. But where the defendant has good paper title to a part of the land occupied, and title by adverse possession is relied upon merely to extend the boundaries of his claim, many cases hold that he must occupy the additional strip in conscious hostility to the true owner. *Grube* v. *Wells*, 34 Ia. 148; *McCabe* v. *Bruere*, 153 Mo. 1. This doctrine seems, however, to be without logical or historical foundation, and puts a premium on bad faith. The weight of authority is against it. *French* v. *Pearce*, 8 Conn. 439; *Daily* v. *Boudreau*, 231 Ill. 228; *Mielke* v. *Dodge*, 135 Wis. 388.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — LIABILITY OF CHARITABLE ORGANIZATION. — The plaintiff, while engaged in making repairs on the premises of the Salvation Army, was injured by the negligence of the agents of the charity. *Held*, that the charity is liable. *Hordern* v. *Salvation Army*, 92 N. E. 626 (N. Y.).

American authorities are practically unanimous in granting some exemption to charities. But charities in England would seem to be liable for the torts of their agents. The early reasoning for exemption from liability was that trust